

STATE OF VERMONT
HUMAN SERVICES BOARD

In re)	Fair Hearing No. 10,341
)	
Appeal of)	

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her a \$50.00 child support "pass-along" for the month of December, 1990. The issue is whether the Department's decision is in accord with the pertinent state and federal statutes and regulations.

FINDINGS OF FACT

The facts are not in dispute. The petitioner receives ANFC for herself and her two children. One of the children's father is required under a court order to make certain monthly child support payments to the Department of Social Welfare as assignee of the petitioner's right to collect support. There is no dispute that under the terms of the court order itself the father's child support payments are "due" by the last day of each calendar month.

In cases in which the Department collects support payments on behalf of ANFC recipients, the Department "passes along" the first \$50.00 of each month's child support payment directly to the ANFC recipients. The dispute in this case arises from the Department's policy of allowing pass-alongs to

ANFC recipients only for months in which the Department receives a support payment in the same calendar month in which it is "due". Under this policy the first payment received by the Department during any calendar month is credited as a "current" payment--triggering a pass-along for that month. Any additional payments received by the Department in any one calendar month are then credited to any "arrearage" owed to the Department by the absent parent. Recipients of ANFC do not receive a pass-along for any calendar month in which a support payment is not received by the Department. Nor do they receive any additional pass-along for months in which the Department receives additional (i.e., "untimely") support payments. The only exception to this policy (see infra) appears to be in cases of wage withholding by employers. In those cases recipients get a pass-along for the calendar month in which the absent parents' wages are withheld by their employers--regardless of when the employers send the payments to the Department.

Based on regulations in effect at that time (not at issue here) the Department sent the \$50.00 pass-along to the ANFC household two months after the month in which it received the support payment. Thus, for example, \$50.00 of a support payment made in, and for, January was passed along to the household with its ANFC check for March; February's payment was passed along in April; and so forth. The regulations have now been amended so that pass alongs are

made in the same month the Department receives support payments.

In this case, for every month until October, 1990, the Department received the father's support check in the calendar month in which it was due; and, as a result, two months later, it passed along \$50.00 of this support to the petitioner. For October, 1990, however, the Department did not receive the father's support payment until November 2, 1990. The Department concedes that the father most likely mailed the payment to the Department on or before October 31, 1990. However, pursuant to its policy (supra), the Department credited this payment as the one due in November, 1990.

On December 3, 1990, the Department received another monthly payment from the father, which it credited as the payment due for December.¹ On December 21, 1990, the Department received another payment from the father, which it credited to October, 1990, the month the father had supposedly "missed". The Department has received "timely" payments from the father since December, 1990.

Because the Department did not consider that it had received the father's October, 1990, support payment until December 21, 1990, the Department did not give the petitioner her \$50.00 pass-along for October (which would have been paid to the petitioner in December). The petitioner did get her pass-along for every other month. The issue in the case is whether the Department's method of

accounting for support payments and pass-alongs is in accord with the law and regulations.

At the hearing, the Department acknowledged an apparent inconsistency between the instructions the Department gives to support payers and the accounting methods it uses to determine "timely" support payments vis-a-vis the determination of when pass-alongs are to be made to recipients. As noted above (except in the cases of wage withholding), the Department does not pass along the first \$50.00 of any support payment to the ANFC recipient unless the Department receives the payment in the calendar month in which it is due. However, the form "bills" the Department prints and sends each month to absent parents who owe periodic support payments to the Department contain the following notice:

TO AVOID DELINQUENCY--PAYMENTS MUST BE RECEIVED
WITHIN 7 DAYS AFTER THE AMOUNT IS DUE.

In the instant case, the Department concedes that it did not consider the father "delinquent" in either his October or his November, 1990 payments. However, it maintains that it nonetheless did not receive a "timely" payment from him in October, 1990. Thus, it maintains, the petitioner is ineligible for a \$50.00 pass-along for that month.

The Department also stated that it does not accept in-person support payments from absent parents, and that absent parents are specifically instructed to mail in their payments.

ORDER

The Department's decision is reversed.

REASONS

The Department argues that it is bound by the federal and state regulations regarding the payment of pass-alongs.

However, an examination of the regulations in question, and of the underlying federal statute, shows that the Department is being overly-restrictive in its assertion that pass-alongs can only be made when the Department receives a child support payment in the calendar month it is due.

The state regulation, W.A.M. § 2331.36(1) provides as follows:

Disposition of Child Support Money

1. The following shall be paid to the assistance group without affecting its ANFC eligibility or decreasing the amount of its payment:

The first \$50 in child support payments made by an absent parent on behalf of an assistance group member in any calendar month. When more than one absent parent makes child support payments on behalf of a single ANFC assistance group in the same calendar month, the maximum amount of child support which can be paid to the assistance group under this provision is \$50 for that calendar month. . . . (Emphasis added.)

Clearly, the above regulation does not explicitly require receipt by the Department of a child support payment in the same calendar month before a pass-along can occur. The regulation states only that the pass-along is to occur whenever a support payment is "made" by the absent parent in the calendar month when due. The Department argues, however, that federal regulations require the more

restrictive reading of W.A.M. § 2331.36. The provision cited by the Department, 45 C.F.R. § 302.51(b)(1), provides as follows:

Of any amount that is collected in a month which represents payment on the required support obligation for that month, the first \$50 of such amount shall be paid to the family. This payment may not be used in determining the amount paid, if any, to the family in paragraph (b)(3) of this section. If the amount collected includes payment on the required support obligation for a previous month or months, the family shall only receive the first \$50 of the amount which represents the required support obligation for the month in which the support was collected. If amounts are collected for one family which represent support payments from two or more absent parents, only the first \$50 of the amount collected which represents the total required support obligation for the month in which the support was collected shall be paid to the family under this paragraph. No payment shall be made to a family under this paragraph for a month in which there is no child support collection. (Emphasis added.)

Comments by the agency at the time this section was promulgated (Federal Register, Vol. 54, No. 176, September 13, 1989) include the following:

Section 102 of Public Law 100 - 485 amends sections 402(a)(8)(A)(vi) and 457(b)(1) of the Act, effective January 1, 1989, to clarify that the first \$50 of support payments received in a month which was due for a prior month must be paid to the family if paid by the absent parent in the month when due. Under the new law, the AFDC family may not be denied the \$50 payment when the absent parent pays support on-time but there is a delay in transmitting the payment from the point of collection to the agency responsible for distribution.

This is consistent with regulations at 45 C.F.R. 302.51(a) [final regulations published on June 9, 1988 (53 FR 21642)], which provide that the date of collection of a child support payment for purposes of distribution is the date on which payment is received by the State IV-D agency or by the legal entity of any State or political subdivision actually making the collection, whichever is earliest. We are expanding the date of collection rule however, with respect to

payments made through wage or other income withholding for the reasons noted below.

Public Law 100 - 485 also made significant changes in the Act affecting requirements for income withholding. Immediate income withholding is required in child support orders issued or modified on or after November 1, 1990, and other changes were made which will ensure that income withholding applies in a majority of cases in the future. (The changes to the Act as a result of Pub. L. 100- 485 not addressed in this document will be regulated separately.)

From the inclusion in Public Law 100 - 485 of the amendments concerning the \$50 pass-through and the amendments which will result in payment of child support through income withholding in the vast majority of cases, we conclude that the Congress' intent was to apply the \$50 pass-through, after January 1, 1989, as of the date of withholding. Therefore, in any case in which an absent parent's child support payment is irrevocably withheld from his or her wages or other income in the month in which the payment was due, even where the IV-D agency does not receive the payment until a later month (because the absent parent's employer or other entity withholding income did not promptly forward to the IV-D agency the support withheld), the date of collection for distribution purposes, will be the date of the withholding. If the State's withholding law includes withholding of other income such as unemployment compensation or pension benefits, the date of collection would be the date of the withholding. In order to implement this statutory requirement, a regulatory amendment is needed to treat the date of withholding from wages or other income as the date of collection for distribution purposes. Amendments are also needed to clarify the applicability of § 302.51(a) and to ensure reporting by employers of the date of wage withholding and appropriate information exchange in interstate cases as, as follows: (Emphasis added.)

The underlying federal statute, 42 V.S.C. § 657(b) provides, in pertinent part:

The amounts collected as support by a State . . . shall . . . be distributed as follows:

- (1) of such amounts as are collected periodically which represent monthly support payments, the first \$50.00 of any payments for a month received in that month, and the first \$50.00 of payments for each prior month received in that month which were made by the absent parent in the month when due shall be paid to

the family without affecting its eligibility for assistance or decreasing any amount otherwise payable as assistance to such family during such month. (Emphasis added.)

Legislative history (Public Law 100 - 145, U.S. Code Cong. and Admin. New, p. 2794) indicates that the underlined portion of the above statute was added in 1988 for the following reasons:

Present law--The first \$50 of amounts collected periodically which represent monthly support payments on behalf of a family receiving case assistance must be paid to the family without affecting eligibility for or the amount of benefits payable to the family during the month.

Committee bill--The Committee bill clarifies that the first \$50 received in a month which was due for a prior month must be disregarded if the payment was made by the absent parent in the month when due. This clarification will assure that if a noncustodial parent makes a timely payment of child support, the first \$50 will be passed on to the family, regardless of whether there is a delay in the processing of the payment by the agency. The Committee believes that this essentially a clarifying amendment that reflects the original intent; however, the Committee is aware that differences of interpretation may exist. The Committee does not intend that an inference should be drawn from the enactment of this provision or its effective date as to the meaning of the law as previously in effect. (Emphasis added.)

In this case the Department does not dispute that the father, in every month, including October and November, 1990, mailed his child support payment to the Department within the calendar month in which it was due.² The issue is whether under the above statute (as well as under the state regulation) this constitutes his having "made" the support payment in that month (and whether under the federal regulation, supra, this constitutes the calendar month the support was "collected" by the Department). The hearing

officer concludes that it does.

Accordingly, when on November 2, 1990, the Department received the support payment that was "made" (or "collected") in October, it should have passed along the first \$50 of it to the petitioner. Similarly, when on December 3, 1990, the Department received the support payment "made" in November, a \$50.00 pass-along should have occurred. The payment received by the Department on December 21, 1990 (which, obviously, the father "made" that same month) should have been credited as the December payment--with the resultant pass-along.

The Department argues that the above-cited legislative history dictates that "untimely" support payments can result in a pass-along only when support payments are received in an untimely manner by the state agency as a result of a "delay in processing" (i.e., wage withholding) by the agency itself--not as a result of a delay "caused" by the absent parent, such as mailing in his payment. This argument is unpersuasive for at least two reasons. First, as noted above, there is no indication whatsoever in the language of the statute or the regulations themselves that the pass-along is restricted to cases of delays in administrative processing. Second, even if this was the law, the "untimely" payment in this case can be directly attributed to the Department's "process" --one in which absent parents are clearly and specifically advised that they have a seven-day "grace period" in which to pay support, and one that

mandates at least a two-day delay between "payment" of support by absent parents and its "receipt" by the Department. The Department cannot, on one hand, create and sanction an administrative child support collection process that, in effect, extends each calendar month by seven days for absent parents, and then, on the other hand, penalize ANFC households when absent parents simply avail themselves of this process. Similarly, ANFC households cannot be made to suffer for a Department policy that effectively prevents an absent parent from making a "timely" payment on the last two days of any calendar month.³

The sole purpose of the \$50.00 pass-along program appears to be to encourage absent parents and recipients to see that the Department receives the child support payments to which it is legally entitled in a timely manner. In this case, nothing in the actions of the petitioner or the father can be viewed as less-than-full compliance and cooperation with this purpose. For the reasons above, it must be concluded that the Department's policy of limiting pass-along payments to child support received by the Department in the calendar month in which it is due is contrary to law and regulation, and fundamental fairness.⁴

The Department's decision is, therefore, reversed.

FOOTNOTES

¹December 3, 1990, was a Monday. Although this was not specifically discussed at the hearing, the hearing officer finds that the father mailed this check on or before November 30, 1990.

²See Footnote 1, supra.

³There is no evidence that the father's court order contains any mention of a "grace period" or that one exists independently as a matter of law separate from the one created (gratuitously) by the Department, or that the court order requires the father to mail in his payments.

⁴The conclusion that the absent parent in this case "made" his child support payments in the months when they were due is based on the finding that he mailed them within that calendar month. However, as long as the Department maintains its 7-day "grace-period", it would also be concluded that support payments mailed after the last day of the calendar month when due but still within the grace-period constitute a "making" of support payments in the month when due within the meaning of the statute and regulations--thus entitling the ANFC household to a pass-along for the month "extended" by the grace period.

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